

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**MATTHEW LEE PHILLIPS,**

**Plaintiff,**

**v.**

**No. 22-cv-0357 SMV**

**LAS CRUCES SUN NEWS and  
BETHANY FREUDENTHAL,**

**Defendants.**

**MEMORANDUM OPINION AND ORDER TO SHOW CAUSE**

THIS MATTER is before the Court on pro se Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 [Doc. 1], filed May 9, 2022 ("Complaint"). No basis for subject-matter jurisdiction is evident from the Complaint. Thus, no later than June 2, 2022, Plaintiff must show cause why this action should not be dismissed.

Plaintiff alleges that he witnessed four individuals burglarizing his vehicle and the individuals assaulted Plaintiff. *See* [Doc.1] at 7. The Third Judicial District Attorney's Office later filed charges against Plaintiff based on Plaintiff's interaction with the individuals. *See id.* Plaintiff alleges that Defendants Las Cruces Sun News and its journalist Bethany Freudenthal's report about the charges against Plaintiff slandered Plaintiff and led to the termination of Plaintiff's employment. *See id.* at 7–8.

The Complaint also references alleged civil-rights violations by Third Judicial District Attorney Timothy Rose but does not assert claims against Mr. Rose in this case because: (i) Plaintiff does not list Mr. Rose as a Defendant; and (ii) Plaintiff filed a separate action asserting

civil rights claims against Mr. Rose based on the same facts alleged in this Complaint. *See Phillips v. New Mexico*, No. 22-cv-0356-GJF.

As the party seeking to invoke the jurisdiction of this Court, Plaintiff bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) (“Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction”); *Tuck v. United Servs. Auto. Ass’n*, 859 F.2d 842, 843 (10th Cir. 1988) (“If the parties do not raise the question of lack of jurisdiction, it is the duty of the federal court to determine the matter sua sponte.”). It appears the Court should dismiss this case because the Complaint does not show that Court has jurisdiction over this matter. *See Fed. R. Civ. P. 12(h)(3)* (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”).

There is no properly alleged diversity jurisdiction because the Complaint states that Plaintiff and all Defendants are citizens of New Mexico. [Doc. 1] at 1–3. To invoke diversity jurisdiction, “a party must show that complete diversity of citizenship exists between the adverse parties and that the amount in controversy exceeds \$75,000.” *Symes v. Harris*, 472 F.3d 754, 758 (10th Cir. 2006). “Complete diversity is lacking when any of the plaintiffs has the same residency as even a single defendant.” *Dutcher v. Matheson*, 733 F.3d 980, 987 (10th Cir. 2013).

There is no properly alleged federal question jurisdiction because the Complaint does not allege that this action “aris[es] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Plaintiff filed his Complaint using the form “Civil Rights Complaint Pursuant to 42 U.S.C. § 1983.” However, there are no factual allegations indicating that Plaintiff is asserting civil rights claims against Defendants Las Cruces Sun News and Brittany Freudenthal or

that Plaintiff's claims against Defendants Las Cruces Sun News and Brittany Freudenthal arise under federal law. The Complaint appears to assert only state-law claims of defamation against Defendants Las Cruces Sun News and Brittany Freudenthal.

**IT IS THEREFORE ORDERED** that **no later than June 2, 2022**, Plaintiff must show cause why the Court should not dismiss this case for lack of jurisdiction. If Plaintiff asserts that the Court has jurisdiction over this case, Plaintiff must also, **no later than June 2, 2022**, file an amended complaint alleging facts that support the Court's jurisdiction over this case. Failure to timely show cause and file an amended complaint may result in dismissal of this case.

**IT IS SO ORDERED.**



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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**